

Ky. OAG 79-142, 1979 WL 33031 (Ky.A.G.)

*1 Office of the Attorney General
Commonwealth of Kentucky

OAG 79-142

February 28, 1979

Mr. Charles Lee Cunningham
123 Landings Drive
Frankfort, Kentucky 40601

Dear Mr. Cunningham:

This is in answer to your letter of February 20, 1979 in which you request an Opinion concerning the following:

I am presently employed by the Department of Transportation as a Traffic Engineering Technologist, this position is under the Merit System. I want to run for City Commissioner of Frankfort and refuse my salary for that office. Under the Merit System, will I be able to keep my present job with the Department of Transportation?

Our response to your question would be in the negative. As you know, under the State Merit System [KRS 18.310\(4\)](#) no employee in the classified service can become a candidate for and occupy a town office if the office is one for which compensation is provided even though it involves a nonpartisan election.

Of course, the Office of City Commission in the City of Frankfort is one for which compensation is attached. Under the terms of [KRS 89.480](#) the courts have consistently held that an agreement by an officer to accept a less sum than the prescribed for the office is void and against public policy. See [McQuillin, Municipal Corporations](#), Volume 4, Section 12.191. The Supreme Court of Kentucky also took this position in the case of [City of Louisville v. Thomas](#), 257 Ky. 540, 78 S.W.2d 767 (1935) and in this respect we quote from this case the following:

In the case of [Town of Nortonville v. Woodward](#), 191 Ky. 730, 231 S.W.224, 225, in which a reduction in the salary of the office of marshal of a town of the sixth class was involved, it is said:

'It is a general rule that an agreement by an officer to accept less than the fixed salary of an office to which he is elected or appointed for his compensation is void, as against public policy.'

In the case of [City of Winchester v. Azbill](#), *supra*, [225 Ky. 389, 9 S.W. 2d 51], this is quoted with approval, and in addition thereto it is said:

'An agreement by a public officer to accept less than the fees or salary prescribed by law being contrary to public policy, the courts should not give effect to it by spelling out a waiver or estoppel.'

Under the circumstances we must conclude you cannot become either a candidate for or hold the office of City Commissioner without violating the State Merit System since compensation is attached to this office which you cannot refuse to accept. In other words you must accept the compensation provided by law and by ordinance which of course would disqualify you under the merit system.

What you do with your salary after its acceptance is of course your own decision but that would have no affect on the question of whether or not you have violated merit law.

Yours very truly,
Robert F. Stephens
Attorney General

By: Walter C. Herdman
Assistant Deputy Attorney General

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